

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/21/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000559

FILED: _____

STATE OF ARIZONA

LAJA K M THOMPSON

v.

JOHN MATTHEW SCALES

DANNY L LOWRANCE

DISPOSITION CLERK-CSC
FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC
TEMPE JUSTICE CT-EAST

MINUTE ENTRY

EAST TEMPE JUSTICE COURT

Cit. No. 75168; 76824

Charge: A. DUI-ALCOHOL
B. DUI W/BAC AT/ABOVE .10

A. MISCONDUCT INVOLVING WEAPONS

DOB: 08/15/32

DOC: 08/19/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since oral argument on May 22, 2002. This Court has considered and reviewed the record of the proceedings from the East Tempe Justice Court, the Memoranda and arguments submitted by counsel.

Appellant, John Matthew Scales, was arrested on August 19, 2000 and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving with A Blood Alcohol Content Greater than .10, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); and Misconduct Involving Weapons, a class 1 misdemeanor in violation of A.R.S. Section 13-3102(A)(2). Several pretrial motions were heard by the trial judge, who denied both of them. First, Appellant claims that the trial judge erred in refusing to grant Appellant's Motion to Suppress the Blood Alcohol Content, and secondly, that the trial court erred in its construction of A.R.S. Section 13-3102(F) and finding that the facts of this case warranted a guilty verdict.

First, Appellant claims the State was unable to prove the qualifications of the phlebotomist who drew blood from Appellant. Apparently the phlebotomist has moved out of state and the prosecution proposed to offer the testimony of the phlebotomist's supervisor to testify about the qualifications of the phlebotomist. Appellant claims this is inadmissible hearsay evidence and that the prosecution must produce the phlebotomist in person to testify about his qualifications, and be subject to cross-examination by Appellant. Recently, the Arizona Court of Appeals has rejected contentions that phlebotomists who withdraw blood for criminal forensic purposes must be supervised by a physician or meet the civil regulatory statute requirements.¹ A.R.S. Section 28-1388(A) provides in part:

The qualifications of the individual
withdrawing the blood and the method used

¹ State of Arizona ex rel. Pennartz v. Olcavage, 200 Ariz. 582, 30 P.3d 649 (App. 2001).

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to withdraw the blood are not foundational prerequisites for the admissibility of a blood-alcohol content determination made pursuant to this subsection.

Our legislature has spoken loudly in enacting the above statute that it is not their intent that the qualifications of a phlebotomist who withdraws blood are not intended to be prerequisites of any kind for the admissibility of the alcohol content of the blood.

On the issue of the qualifications of the phlebotomist who is unavailable to testify, it seems entirely appropriate that the supervisor of that phlebotomist could easily testify, based upon personal observation, of the qualifications of his or her employees. Appellant's contention that such testimony is based upon hearsay must fail. Additionally, this court notes that hearsay is admissible pursuant to Rule 104(a), Arizona Rules of Evidence, to admit evidence about the preliminary admissibility of evidence. The trial court is warranted in considering hearsay for purposes of determining whether the phlebotomist was qualified to withdraw blood, and whether evidence flowing from the blood withdrawal is admissible. Appellant's complaints regarding the missing phlebotomist are, therefore, without merit. The trial judge did not err in denying Appellant's Motion to Suppress/Dismiss the blood alcohol results.

Appellant's second contention, is that the trial court erred in finding Appellant guilty of Misconduct Involving Weapons because Appellant's pistol was located within a piece of luggage inside of his vehicle. A.R.S. Section 13-3102(F) provides in part:

Subsection A, paragraph 2 of this section (which contains the charge against Appellant) shall not apply to a weapon or weapons carried in a case, holster, scabbard, pack or luggage which is carried within a means of transportation or within a storage

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compartment, trunk or glove compartment of
a means of transportation.

Clearly, it was the legislature's intent to provide a clear exception to the crime of Misconduct Involving Weapons for persons who carry a concealed weapon inside luggage that is also inside a motor vehicle or means of transportation. Quite simply, the language of this statute can not be interpreted in any manner other than a clear exception for cases, such as Appellant's, for persons carrying weapons within luggage within a vehicle. Clearly, the trial judge erred in finding Appellant guilty of Misconduct Involving Weapons. Appellant's conduct and the facts of this case clearly reflect that his pistol was inside a piece of luggage, and the luggage was carried within a means of transportation -- a motor vehicle.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed as to Counts 1 and 2 (Driving While Under the Influence and Driving with a Blood Alcohol Content Greater than .10).

IT IS FURTHER ORDERED reversing and vacating the judgment of guilt and sentence imposed as to Count 3, Misconduct Involving Weapons.

IT IS ORDERED dismissing the Misconduct Involving Weapons charge.

IT IS FURTHER ORDERED remanding this case back to the East Tempe Justice Court for all future and further proceedings in this case.

Date: June 21, 2002

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT
Docket Code 512